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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

PEDRO MORALES, II, individually and on behalf of All Current and Former Employees of SAIA, INC., Plaintiff, v. SAIA, INC., and DOES 1 through 10, inclusive, Defendants.	Case No.: 08CV-0829 H LSP CLASS ACTION **DEFENDANT SAIA MOTOR FREIGHT LINE, LLC'S CERTIFICATION OF FILING AND SERVICE OF NOTICE TO ADVERSE PARTY AND STATE COURT OF REMOVAL TO FEDERAL COURT**

I, Pamela Carroll Calvet, certify and declare as follows:

1. I am an attorney duly licensed to practice law in the courts of the State of California and the United States District Court for the State of California. I am counsel with the law firm of Bryan Cave LLP, counsel of record for Defendant Saia Motor Freight Line, LLC ("Defendant") in the above-entitled action. I make this

declaration based upon personal knowledge and if called as a witness I could and would competently testify as set forth below.

2. Attached as Exhibit 1 is a true and correct copy of Defendant's Notice to Adverse Party and State Court of Removal to Federal Court. I caused this document to be filed with the California Superior Court, County of San Diego, in which the above-captioned case was commenced. Attached to the document is a certificate of service indicating that it was duly served on Plaintiff's counsel as required by 28 U.S.C. § 1446(d).

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed this 22 day of May, 2008, at Santa Monica, California.

Pamela Carroll Calvet

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EXHIBITS

Exhibit 1 .... pp. 3-60

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Attorneys for Defendant
SAIA MOTOR FREIGHT LINE, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

FAXED

PEDRO MORALES, II, individually and on behalf of All Current and Former Employees of SAIA, INC., Plaintiff, v. SAIA, INC., and DOES 1 through 10, inclusive, Defendants.	Case No. 37-2008-00080522-CU-OE-CTL **CLASS ACTION** [Assigned for all purposes to the Hon. John S. Meyer, Dept. C-61] **DEFENDANT SAIA MOTOR FREIGHT LINE, LLC'S NOTICE TO ADVERSE PARTY AND TO STATE COURT OF REMOVAL TO FEDERAL COURT** Date Action Filed: March 24, 2008 Trial Date: TBA

TO PLAINTIFF AND HIS ATTORNEYS OF RECORD AND TO THE CLERK OF THE SUPERIOR COURT:

PLEASE TAKE NOTICE THAT on May 21, 2008, Defendant Saia Motor Freight Line, LLC filed a Notice of Removal of this Action in the United States

District Court for the Southern District of California. A true and correct copy of the Notice of Removal is attached as Exhibit 1.

PLEASE TAKE FURTHER NOTICE THAT, pursuant to 28 U.S.C. § 1446(d), the filing of the Notice of Removal in the United States District Court, together with the filing of this Notice with this Court, effects the removal of this action. Therefore, this Court may proceed no further with Plaintiff's action, unless and until the action is remanded.

Dated: May 22, 2008

BRYAN CAVE LLP
Pamela C. Calvet
Julie E. Patterson
Amy Gantvoort

By: /s/ Pamela Carroll Calvet
Pamela C. Calvet
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Attorneys for Defendant
SAIA MOTOR FREIGHT LINE, LLC

FILED
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BY ____ DEPUTY

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PEDRO MORALES, II, individually and on behalf of All Current and Former Employees of SAIA, INC., Plaintiff, v. SAIA, INC., and DOES 1 through 10, inclusive, Defendants.	CASE NO. 08 CV 0829 H LSP CLASS ACTION **SAIA MOTOR FREIGHT LINE, LLC'S NOTICE OF REMOVAL UNDER 28 U.S.C. §§ 1332(d) AND 1441(a) (DIVERSITY OF CITIZENSHIP)** [Filed Concurrently with Declaration of Walter F. Schumacher in Support]

TO THE CLERK OF THE COURT AND TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332(d), 1441(a), 1446 and 1453, Defendant Saia Motor Freight Line, LLC ("Defendant"), removes to this Court the state action described below.

I. BACKGROUND

1. Plaintiff Pedro Morales, II ("Plaintiff") filed a purported class action in the Superior Court of the State of California, County of San Diego, entitled PEDRO MORALES, II, individually, and on behalf of all current and former employees of SAIA, INC., v. SAIA, INC., and DOES 1 through 10, inclusive, Case No. 37-2008-00080522-CU-OE-CTL, on March 24, 2008 ("Action"). On or about April 15, 2008, an Amendment to Complaint was filed to insert Saia Motor Freight Line, LLC in place of the fictitious name of Doe 1.

2. Defendant was served with a copy of the Summons and Complaint on April 21, 2008. Saia, Inc. has not been served. Defendant filed an Answer in the Action, but has not taken part in any proceedings or filed any other pleadings. True and correct copies of these documents and all other documents received in the Action are attached as Exhibit 1.

3. No other pleadings, process or orders have been served on Defendant in the Action.

4. Plaintiff seeks to represent a purported class, the existence of which is expressly denied.

5. In the Complaint, Plaintiff asserts claims for: (1) failure to pay regular wages; (2) failure to pay overtime wages; (3) failure to pay vacation wages; (4) failure to provide mandated meal periods; (5) failure to provide mandated rest periods; (6) failure to pay timely wages; (7) failure to provide itemized wage statements; and (8) unfair competition related to the employment and compensation of class members. Compl. ¶¶ 8, 27(b), 29-31, 33-38, 41-43, 45-53, 56-63, 67-71,

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74-77, 80-84. Plaintiff's claims (1)-(7) are brought under the California Labor Code, and claim (8) is brought under California Business and Professions Code section 17200 *et seq.*

6. Plaintiff seeks to represent a purported class, the existence of which is expressly denied, of "all current and former hourly employees who worked for Defendant in California during the relevant time periods who were not provided meal and/or rest breaks, were not paid overtime, who worked off the clock, and not timely paid either their wages due or wage premiums due." Compl. ¶ 26. Plaintiff further purports to allege an additional class, the existence of which is also expressly denied, "for former employees who were not paid their vested vacation wages upon termination." *Id.* Plaintiff also alleges that he "brings this action as a class action to recover all statutory damages, monies and penalties due and owing for all current and former non-exempt employees of SAIA in California as a result of its failure to pay regular wages, failure to pay overtime wages, failure to provide rest and/or meal periods, failure to provide itemized wage statements, failure to keep accurate records of time worked, failure to pay accrued and vested vacation and failure to pay timely wages at the termination of employment, all in violation of California Labor Code and in violation of the Wage Orders of the Industrial Welfare Commission." Compl. ¶ 25.

7. Plaintiff seeks: damages; statutory penalties "to the extent permitted by law, including those pursuant to the Labor Code and Order of the Industrial Welfare Commission"; restitution as provided by Business and Professions Code § 17200 *et seq.*; "injunctive relief as provided by the Labor Code and Business and Professions Code § 17200 *et seq.*"; an order requiring disgorgement of all funds acquired by any act or practice declared unlawful, unfair, or fraudulent; an award of damages in the amount of unpaid compensation, including unpaid wages, benefits, and penalties; an award of an additional hour of pay at each represented employee's regular rate of compensation pursuant to Labor Code § 226.7(b); declaratory

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judgment that Defendant has violated Labor Code §§ 201, 202, 226, 226.7, 227.3, 510, 512, and 1194; prejudgment interest, costs, and attorneys' fees; and "[s]uch other relief as the Court deems just and proper." *Id.* at Prayer, pp. 18:20-19:18.

II. BASIS FOR REMOVAL

8. Congress passed the Class Action Fairness Act ("CAFA") in February 2005 to "expand substantially federal court jurisdiction over class actions." S. Rep. No. 109-14, *43, *as reprinted in* 2005 U.S.C.C.A.N. 3, **41, 109 S. Rpt. 14 (the Act is "intended to expand substantially federal court jurisdiction over class actions"). Its provisions "should be read broadly, with a strong preference that interstate class actions should be heard in a federal court if properly removed by any defendant." *Id.*; *In re Textainer Partnership Securities Litigation*, 2005 WL 1791559, *3, 2005 U.S. Dist. LEXIS 26711, *10 (N.D. Cal. 2005) (quoting 151 Cong. Rec. H723-01, H-727 (2005) (statement of Congressman Sensenbrenner)).

9. Pursuant to CAFA, when the number of purported class members defined in the Complaint exceeds 100, this Court has original jurisdiction over "any civil action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which . . . any member of a class of plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2)(A); *see also*, 28 U.S.C. § 1332(d)(5)(B).

10. Further, "the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds" the $5,000,000 requirement, 28 U.S.C. § 1332(d)(6), thereby "abrogat[ing] the rule against aggregating claims." *Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U.S. 546, 571 (2005).

11. The requirements for this Court's exercise of diversity jurisdiction over a purported class action are clearly and unequivocally satisfied in this case.

A. Diversity of Citizenship

12. Plaintiff was, at the time of the filing of the Action, a citizen of the

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State of California. Compl. ¶ 11; Schumacher Decl. ¶ 16.

13. Defendant Saia Motor Freight Line, LLC is a limited liability company which was organized under the laws of the State of Louisiana, with its principal place of business in Georgia. Schumacher Decl. ¶ 3. An LLC is a citizen of every state of which its owners/members are citizens. *Johnson v. Columbia Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006) ("We therefore join our sister circuits and hold that, like a partnership, an LLC is a citizen of every state of which its owners/members are citizens"). The sole member of Saia Motor Freight Line, LLC is Saia Transportation, Inc. Schumacher Decl. ¶ 3. Saia Transportation, Inc. is, and at the time of the filing of the Action was, a citizen of the State of Delaware, where it is incorporated, and a citizen of the State of Georgia, where it maintains its principal place of business. 28 U.S.C. § 1332(c)(1); Schumacher Decl. ¶ 4. Therefore, Saia Motor Freight Line, LLC is a citizen of the States of Delaware and Georgia.

14. Saia, Inc. is a citizen of the State of Delaware, where it was incorporated, and a citizen of the State of Georgia, where it maintains its principal place of business. 28 U.S.C. § 1332(c)(1); Schumacher Decl. ¶ 5.

15. For federal jurisdiction, CAFA requires only minimal diversity, that is, at least one purported class member must be a citizen of a State different from any Defendant. 28 U.S.C. § 1332(d)(2)(A). Because Plaintiff is a citizen of California, and Defendant and Saia, Inc. are citizens of Delaware and Georgia, CAFA's requirement of minimal diversity is met. *See id.* ("any member of a class of plaintiffs is a citizen of a State different from any defendant").

B. Putative Class Numerosity

16. Plaintiff alleges that the purported class, the existence of which is expressly denied, contains at least 200 members in California. Compl. ¶ 27(a). Review of Defendant's employment data demonstrates that the putative class, as broadly alleged by Plaintiff, and the existence of which is denied by Defendant, is in

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excess of 1200 members over the alleged class period. Schumacher Decl. ¶ 13. Thus, CAFA's requirement that there be at least 100 putative class members is satisfied. *See* 28 U.S.C. § 1332(d)(5)(B).

C. Determination of The Amount in Controversy

17. The amount in controversy is first determined on the face of the complaint. *Rippee v. Boston Market Corporation*, 408 F. Supp. 2d 982, 984 (S.D. Cal. 2005) ("The procedure in the Ninth Circuit for determining the amount in controversy on removal requires a district court to first consider whether it is 'facially apparent' from the complaint that the jurisdictional amount is in controversy.") (quoting *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997)); *Lowdermilk v. U.S. Bank Nat'l Assoc.*, 479 F.3d 994, 998 (9th Cir. 2007) ("Our starting point is 'whether it is "facially apparent" from the complaint that the jurisdictional amount is in controversy.'") (quoting *Abrego v. The Dow Chemical Co.*, 443 F.3d 676, 690 (9th Cir. 2006), in turn quoting *Singer*, 116 F.3d at 377). If not, the Court may consider facts from the removal petition, as well as evidence submitted by the parties, including summary judgment-type evidence relevant to the amount in controversy at the time of the removal. *Singer*, 116 F.3d at 377; *Rippee*, 408 F. Supp. 2d at 984.

18. Ninth Circuit law requires proof of the amount in controversy by a preponderance of the evidence. *Abrego*, 443 F.3d at 683 ("[w]here the complaint does not specify the amount of damages sought, the removing defendant must provide by a preponderance of the evidence that the amount in controversy requirement has been met"). Under this burden, the defendant must provide evidence that it is 'more likely than not' that the amount in controversy satisfies the federal diversity jurisdictional amount requirement." *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996). Said burden is not "daunting," as courts recognize that under this standard, a removing defendant is not obligated to "research, state and prove the plaintiff's claim for damages." *Muniz v. Pilot Travel*

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Centers LLC, No. Cir. S-07-0325 FC 12 EFB, 2007 WL 1302504, *2, 2007 U.S. Dist. LEXIS 31515, *7 (E.D. Cal. April 30, 2007); *McGraw v. Lyons*, 863 F. Supp. 430, 434 (W.D. Ky. 1994). "Once the proponent of jurisdiction has set out the amount in controversy, only a 'legal certainty' that the judgment will be less forecloses federal jurisdiction." *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446, 447 (7th Cir. 2005).

19. In determining the amount in controversy, reasonable assumptions may be based on the approximate number of putative class members and the nature of their allegations. *See Clean Air Council v. Dragon Intern. Group*, No. 1:CV-06-0430, 2006 WL 2136246, *3-*4, 2006 U.S. Dist. LEXIS 52292, *7-*11 (M.D. Pa. July 28, 2006) (slip opinion) (jurisdiction established under CAFA when complaint alleged that class consisted of "tens of thousands," supporting an inference of 20,000 class members and potential damages of $37 million); *In re Intel Corp. Microprocessor Antitrust Litigation*, No. MDL 05-1717-JJF, Civ. A. 05-485-JJF, 2006 WL 1431214, *2, 2006 U.S. Dist. LEXIS 36716, *4-*6 (D. Del. May 22, 2006) (slip opinion) (finding amount in controversy requirement met based on census data and plaintiff's allegations); *Muniz,* 2007 WL 1302504, *3-*5, 2007 U.S. Dist. LEXIS 31515 at *3-*4 (removing defendant met its burden by introducing, in the declaration of the defendant's human resources manager, evidence of the purported class size and related information and applying those numbers to plaintiff's allegations, even at a rate of 100 percent violation, where the plaintiff's complaint alleged nothing that in any way limited the possibility of maximum recovery).

20. Following service of Plaintiff's complaint, Defendant compiled employment data regarding the number of hourly employees it employed in California from March 24, 2004, until March 24, 2008, the employee's average rates of pay and the number of workweeks worked by these employees. *See* Schumacher Decl. ¶ 8. During the purported class period, approximately 1,299 current and

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former employees of Saia were employed on an hourly basis as full and part-time dockworkers, city drivers, clerical, and maintenance workers. Schumacher Decl. ¶ 13. These hourly employees collectively worked an estimated 92,341 workweeks from March 24, 2004, until March 24, 2008 at an average annual rate of $17.89. *Id.* In addition, during this same period, approximately 261 current and former employees worked as California linehaul drivers. *Id.* California linehaul drivers are paid a combination of $.5242 per mile driven and an hourly rate for certain non-driving time. *Id.*

21. Plaintiff, *inter alia,* seeks compensation for alleged missed meal and rest periods under Labor Code Section 226.7 and Industrial Wage Order 9, penalties under Labor Code Section 226(e) for the alleged failure to provide itemized wage statements, and damages for alleged failure to properly pay all final wages due upon termination pursuant to Labor Code Section 203. Compl. ¶¶ 8, 10, 25-26, 37-39, 45-79. Additionally, Plaintiff seeks to recover for alleged unpaid overtime and accrued unused vacation benefits allegedly forfeited after termination and other civil penalties. Compl. ¶¶ 29-44. Plaintiff alleges that each of his claims for damages and penalties arises under the applicable Labor Code provision and the Business and Professions Code (which arguably has a 4-year statute of limitations). Compl. ¶¶ 80-90.

22. Plaintiff alleges that Labor Code Section 226.7 requires employers to pay employees one additional hour of pay at the employee's regular rate of compensation for each workday that a meal is not provided as mandated by Labor Code Section 512 and/or the applicable Industrial Wage Order. Cal. Lab. Code § 226.7; Compl. ¶¶ 45-50. Plaintiff alleges a separate claim under Labor Code Section 226.7 seeking one hour of pay at the employees' regular rate for each day that a represented employee was not permitted a rest break as "mandated" by the applicable Industrial Wage Order. Compl. ¶¶ 56-63. Plaintiff alleges that Defendant engaged in a "widespread practice" of denying the putative class

members their meal and/or rest breaks and that putative class members were not paid a one hour wage premium for the denial of proper rest breaks, nor the one hour wage premium for the denial of proper meal periods. Compl. ¶¶ 20, 23. Accepting as true the allegations in the Complaint, if all the putative class members failed to receive, or untimely received, their required meal periods "at least twice a week" as alleged by Plaintiff (Compl. ¶ 20) each week, the minimum amount placed in controversy by Plaintiff for this particular claim would exceed $3,303,061, exclusive of interest. *See* Schumacher Decl. ¶ 13 (92,341 workweeks x 2 hours of pay per week x $17.89 average hourly wage = $3,303,960.90); *see also, Rippee*, 408 F. Supp. 2d at 985-86 (the amount in controversy is properly evaluated based on Plaintiffs' allegations and Defendant's own employment data).

23. Plaintiff alleges as a separate claim an entitlement to payment for alleged missed rest breaks. Accepting as true the allegations in the Complaint, if all the putative class members failed to receive even 2 mandated rest breaks (Plaintiff alleges no such limitation and maintains the practice of denying rest breaks was "widespread"), the amount "placed in controversy" is at a minimum of $3,303,961, exclusive of interest (this is the same calculation as used for the meal periods above).

24. California Labor Code Section 226(a) requires employers to provide accurate itemized wage statements. California Labor Code Section 226(e) provides that an employee who suffers an injury as the result of a knowing and intentional failure by an employer to provide an accurate itemized wage statement may recover the greater of actual damages or $50.00 per payroll period for the initial pay period in which a violation occurs and $100 per employee for each violation in a subsequent pay period, not to exceed $4,000. Cal. Lab. Code § 226(e). Plaintiff alleges that Defendant knowingly and intentionally failed to provide accurate itemized wage statements to each putative class throughout each putative class member's tenure and that Plaintiff and the putative class members are entitled to

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recovery pursuant to California Labor Code Section 226(e). Compl. ¶¶ 76-78. The statute of limitations for penalty claims is one year, thus, the relevant time period for determining the amount in controversy with respect to this claim is March 24, 2007, to March 24, 2008. Cal. Code Civ. Proc. § 340(a). Accepting as true the allegations in the Complaint, asserting that the putative class members did not receive accurate itemized wage statements because their wage statements did not accurately reflect all hours worked, payments for missed meal or rest periods or overtime compensation, the amount placed in controversy by Plaintiff for this particular claim would exceed $2,237,100. *See* Schumacher Decl. ¶ 14 (437 employees working at least 41 weeks x maximum penalty of $4,000 = $1,748,000; plus 404 weekly payroll periods x $50 = $20,200; plus 4,689 weekly payroll periods x $100 = $468,900 ($1,748,000 + $20,200 + $468,900 = $2,237,100)).

25. California Labor Code Section 203 provides that an employer who willfully fails to pay all wages due a terminating or quitting employee as required under Labor Code Section 201 or 202 shall be subject to a penalty equivalent to one day's wages for each day the payment is late, up to 30 calendar days. Cal. Lab. Code § 203; *see also, Rippee*, 408 F. Supp. 2d at 983-85 (in determining the amount in controversy in a class action wage claim removed from state court, the court focused on plaintiff's "big ticket" claims, i.e., waiting time penalty claims under the California Labor Code and using defendants' own numbers, the court observed that the potential amount of waiting time penalty claims at stake could be calculated by multiplying the number of former employees in the proposed class by thirty days' wages; thirty days' wages could be calculated by multiplying the average number of hours worked by the average rate of pay). Accepting as true the allegations in the Complaint, the amount in controversy for this particular claim would exceed $2,892,470, exclusive of interest. *See* Schumacher Decl. ¶ 15 (792 hourly employees, exclusive of linehaul drivers, terminated between March 24, 2004, and March 24, 2008 x $15.34 per hour (lower dockworker average rate at termination) x

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6 hours per day (lower average scheduled hours for part-time dockworker) x 30 calendar days = $2,186,870 + 112 linehaul drivers termed x $210 average daily rate x 30 days = $705,600).

26. Accepting Plaintiff's allegations as true, the amount in controversy before attorneys' fees could exceed $11,737,490 ($3,303,960 for meal period payments + $3,303,960 for rest period payments + $2,237,200 for pay stub penalties + $2,892,470 for waiting time penalties = $11,737,490). This does not include any amount attributed to Plaintiff's claims for overtime, unpaid vacation or civil penalties which would further increase the amount Plaintiff has placed in controversy.[1]

27. Attorneys' fees may be included for purposes of determining whether the amount in controversy requirement is satisfied. *Lowdermilk*, 479 F.3d at 1000 ("where an underlying statute authorizes an award of attorneys' fees, either with mandatory or discretionary language, such fees may be included in the amount in controversy.") (citing *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998)). Plaintiff seeks attorneys' fees pursuant to California Labor Code Sections 218.5 and 1194, and Civil Code Section 1021.5. Compl. at Prayer, p. 18:24-25. A review of class action litigation shows that courts have historically awarded fees ranging from 20 to 50 percent, depending upon the circumstances of the case. *See e.g., In re Activision Securities Litig.*, 723 F.Supp. 1373, 1378 (N.D. Cal. 1989). *Newberg on Class Actions* is in accord. "Empirical studies show that,

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1 The calculations contained herein are all premised on the assumption, for purposes of establishing jurisdiction, that Plaintiff's allegations are true. As stated therein and in its Answer, Defendant denies Plaintiff's allegations, denies that this action is appropriate for class certification and denies liability to Plaintiff and the purported class members on the theories alleged. This, however, does not change the fact that Plaintiff's allegations have placed the requisite amount in controversy to allow for federal jurisdiction.

regardless whether the percentage or lodestar method is used, fee awards in class actions average around one-third of the recovery." Conte and Newberg, *Newberg on Class Actions,* Vol. 4, § 14:6, p. 551 (West Group 2002); *Paul, Johnson, Alston & Hunt v. Graulty,* 886 F.2d 268, 272-73 (9th Cir. 1989) (district court should take note that "25 percent has been a proper benchmark figure"). Accepting the 25% benchmark for purposes of this analysis only, the amount in controversy in attorneys' fees for this action could exceed $2,934,372 (25% of $11,737,490).

28. The cost to Defendant of complying with an injunction may also be included for purposes of determining whether the amount in controversy requirement is satisfied. *Rogers v. Central Locating Serv. Ltd.*, 412 F. Supp. 2d 1171, 1179-80 (W.D. Wash. 2006) ("the 'value' of injunctive relief is determined by calculating the defendant's costs of compliance: 'where the value of a plaintiff's potential recovery ... is below the jurisdictional amount, but the potential cost to the defendant of complying with the injunction exceeds that amount, it is the latter that represents the amount in controversy for jurisdictional purposes.'") (quoting *In re Ford Motor Co.*, 264 F.3d 952, 958 (9th Cir. 2001)). Plaintiff seeks an injunction pursuant to the California Labor Code and California Business and Professions Code Section 17200 *et seq*. Compl. at Prayer, p. 18:28 – 19:1.

29. The legislative history of CAFA further supports this Court's exercise of jurisdiction. "[I]f a federal court is uncertain about whether 'all matters in controversy' in a purported class action 'do not in the aggregate exceed the sum or value of $5,000,000,' the court should err in favor of exercising jurisdiction over the case." S. Rep. No. 109-14, at *42, *as reprinted in* 2005 U.S.C.C.A.N. 3, **40, 109 S. Rpt. 14; *see also In re Textainer*, 2005 WL 1791559, *3, 2005 U.S. Dist. LEXIS 26711, *10.

III. SUPPLEMENTAL JURISDICTION

30. To the extent Plaintiffs have alleged any other claims for relief in the Complaint over which this Court would not have original jurisdiction under

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§ 1332(d), the Court has supplemental jurisdiction over any such claims under 28 U.S.C. § 1367(a).

IV. PROCEDURAL COMPLIANCE

31. This Notice of Removal is timely filed within thirty days of April 21, 2008, when Defendant was served with the Action.

32. The United States District Court for the Southern District of California embraces the county and court in which the state court action is now pending. 28 U.S.C. § 84(c). Therefore, this Action is properly removed to this Court pursuant to 28 U.S.C. § 1441(a).

Dated: May 21, 2008

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Julie E. Patterson
Pamela C. Calvet
Amy M. Gantvoort

By: *Pamela Carroll Calvet*
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EXHIBITS

Exhibit 1 .... pp. 14-53

SUMMONS SUM-100
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

2008 MAR 24 PM 2:32

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
SAIA, INC., and DOES 1 through 10, inclusive.

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
PEDRO MORALES, II, individually and on behalf of All Current and Former Employees of SAIA, Inc.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court, County of San Diego
330 W. Broadway
San Diego, CA 92101

CASE NUMBER:
(Número del Caso): 37-2008-0008052-CU-OE-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Lori J. Guthrie, Esq. 619-692-0800
GRACE HOLLIS LOWE HANSON & SCHAEFFER LLP
3555 Fifth Avenue
San Diego, CA 92103

DATE: 24 March 2008 MAR 24 2008 Clerk, by L. TIERNEY, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. [ ] as an individual defendant.
2. [ ] as the person sued under the fictitious name of (specify):
3. [X] on behalf of (specify): Saia Motor Freight Lines, LLC
under: [X] CCP 416.10 (corporation) [ ] CCP 416.60 (minor)
[ ] CCP 416.20 (defunct corporation) [ ] CCP 416.70 (conservatee)
[ ] CCP 416.40 (association or partnership) [ ] CCP 416.90 (authorized person)
[X] other (specify): LLC
4. [ ] by personal delivery on (date):

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. January 1, 2004]

SUMMONS

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Code of Civil Procedure §§ 412.20, 465

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Attorneys for Plaintiff

2008 MAR 24 PM 2:32

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION

PEDRO MORALES, II, individually and on behalf of All Current and Former Employees of SAIA, INC.,

Plaintiff,

v.

SAIA, INC., and DOES 1 through 10, inclusive,

Defendants.

Case No. 37-2008-00080522-CU-OE-CTL

Unlimited Civil - Amount Demanded Exceeds $25,000.00

COMPLAINT

CLASS ACTION

1. **Failure to Pay Regular Wages;**
2. **Failure to Pay Overtime Wages;**
3. **Failure to Pay Vacation Wages;**
4. **Failure to Provide Mandated Meal Periods;**
5. **Failure to Provide Mandated Rest Periods;**
6. **Failure to Pay Timely Wages;**
7. **Failure to Provide Itemized Wage Statements; and**
8. **Unfair Competition (B&P Code §17200 *et seq.*)**

JURY TRIAL DEMANDED

Plaintiff PEDRO MORALES, for Causes of Action against Defendants, and each of them, allege as follows:

I.

NATURE OF ACTION AND INTRODUCTORY STATEMENT

1. Plaintiff PEDRO MORALES (hereinafter "MORALES" or "Plaintiff") brings this action against Defendants SAIA, Inc., and DOES 1 through 10 (hereinafter collectively referred to as "SAIA" or "Defendants") for engaging in a systematic scheme of wage abuses in violation of the California Labor Code and the Industrial Welfare Commission Wage Orders, all of which contribute to SAIA's deliberate unfair competition.

2. SAIA has been in business for approximately 84 years and employs thousands of employees in 151 locations in 34 states, including California.[1] SAIA is a carrier specializing in less-than-truckload "LTL" services.

3. SAIA engages in a systematic pattern of mistreatment toward its employees by denying specific rights afforded to them under California law, such as denying rest breaks, denying an uninterrupted 30-minute meal period, refusing to pay for all hours worked, refusing to pay all earned vacation wages at the end of employment, and failing to keep accurate records.

4. In fact, SAIA's policy and procedure manual expressly violates and disregards California's wage and hour laws. For instance, SAIA's vacation policy provides that a terminating employee will receive pay in place of any earned unused vacation and that vacation benefits are not accrued.

5. Under SAIA's vacation policy, an employee completing one year of service is entitled to one week of vacation (i.e., 5 days). As SAIA's vacation benefits are not available until after January 1 of the year following service, SAIA has established a schedule for earning vacation if you did not work a full year at the beginning of your employment. If you started between January 1 and

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[1] SAIA was founded in 1924. Yellow Corporation purchased SAIA in 1993. After that time, Yellow Corporation (operating under the SAIA name) purchased and integrated other carrier companies to expand operations. Yellow Corporation purchased WestEx in 1994. WestEx was then integrated into SAIA in or about 2001. (Information from SAIA Employee Manual). Plaintiff began working at WestEx in 1998.

February 28, you would earn the full 5 days of vacation. However, if you started between November 1 and December 31, you would not earn any vacation.

6. SAIA's vacation policy is illegal in that it requires a terminating employee to forfeit accrued and vested vacation pay in violation of both Labor Code §227.3 and the Supreme Court's ruling in Suastez v. Plastic Dress Up (1982) 31 Cal. 3d 774. Furthermore, SAIA fails to pay its terminating employees, including MORALES, all of their earned vacation at the time of separation from SAIA.

7. In addition, during the course of a working day, employees were forced to work through rest breaks and missed meal breaks to complete the loading of trucks for delivery. On these days, SAIA failed to pay MORALES, and other similarly aggrieved employees, missed meal and rest break premiums. As such, SAIA disregarded California laws mandating uninterrupted, work-free breaks, meal periods and compensation for all hours worked.

8. Plaintiff is further informed and believes, and thereon alleges, that SAIA has increased its profits by violating state wage and hour laws and exploiting its employees, by, among other things: (1) failing to pay its employees all wages for time worked, (2) failing to provide its employees with proper meal and rest breaks and premium pay for missed meals and breaks, (3) requiring off the clock work, (4) failing to pay vested vacation wages, and (5) failing to pay all wages due and owing when an employee quit or was terminated.

9. Plaintiff is informed and believes, and thereon alleges, that SAIA systematically violated both the wage and hour components of the Labor Code and Wage Orders to decrease expenses and to increase its level of productivity and profits, something that its law-abiding competitors are not able to do.

10. Plaintiff brings this lawsuit seeking declaratory, injunctive and monetary relief against Defendants and each of them, on behalf of himself and all other current and former employees of Defendants throughout the State of California who are similarly-situated (hereinafter referred to as "Represented Employees") to recover, among other things, unpaid wages and benefits, interest, attorneys' fees, penalties, costs and expenses pursuant to California Labor Code §§ 201, 202, 203, 204, 210, 218.6, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174.5, 1194, 1194, 1194.2, 1194.5 and

1198. Plaintiff reserves the right to name additional representatives throughout the State of California, and hereby alleges, as follows:

II.

PARTIES

11. At all relevant times, Plaintiff MORALES was employed by Defendant in San Diego County. Defendants conduct, as hereinafter alleged, occurred in the County of San Diego, State of California. At all relevant times, MORALES was a non-exempt employee of Defendant.

12. At all relevant time, Defendant SAIA, was doing business in the County of San Diego, State of California.

13. Plaintiff is informed and believes and thereon alleges that Defendant SAIA is, and at all relevant times was, a Delaware corporation authorized to do business in the County of San Diego, State of California, and that it is an employer as defined in and subject to the California Labor Code and Industrial Welfare Commission Wage Orders.

14. At all relevant times, SAIA and DOES 1 through 10 were and/or are Plaintiff's employer or person acting on behalf of Plaintiff's employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code § 558.

15. The true names and capacities of the Defendants named as DOES 1 through 10, inclusive, are presently unknown to Plaintiff. Plaintiff will amend this Complaint, setting forth the true names and capacities of these fictitious Defendants when they are ascertained. Plaintiff is informed and believe and thereon allege that each of the fictitious Defendants has participated in the acts alleged in this Complaint.

16. Plaintiff is further informed and believes and thereon alleges that at all relevant times, each Defendant, whether named or fictitious, was the agent or employee of the corporation, or the corporation itself, and in participating in the acts alleged in this Complaint, acted within the scope of such agency, or employment, or ratified the acts of the other.

III.

GENERAL ALLEGATIONS

17. Plaintiff MORALES commenced employment with SAIA on or about March 30, 1997 as a "non-exempt" dock worker. His duties included: loading and unloading truck trailers and filling out shipping manifests. His main priority was to load freight in a safe and timely manner to get the delivery drivers on the road as close to the beginning of their shift as possible. MORALES typically worked the "graveyard" shift, with his regular shift starting at 12 midnight. SAIA terminated MORALES on March 27, 2007. However, SAIA processed his "last day" as March 29, 2007.

18. At the time of his termination, MORALES was not provided with his final paycheck as required by Labor Code § 201. When MORALES was finally paid, on March 30, 2007, SAIA failed to pay all wages due. Specifically, SAIA failed to pay MORALES for earned and vested "vacation" wages and "personal time off" wages that became available for use on January 1, 2007.

19. In addition, SAIA failed to pay MORALES the vacation time that vested from January 1, 2007 through March 27, 2007.

20. Moreover, SAIA forced MORALES to "work through" mandated meal periods at least twice a week in order to keep up with SAIA's delivery schedules. In addition, on occasions when MORALES was permitted his meal break, it was often not made available until after completing his 5th hour on the job. Plaintiff and the Represented Employees were not paid a one hour wage premium for the denial of rest breaks nor the one hour wage premium for the denial of proper meal periods.

21. Plaintiff further alleges that SAIA failed and refused to pay earned vacation wages at the time Plaintiff, and other employees', employment ended.

22. On information and believe, SAIA has committed wage and hour violations with numerous current and former employees of SAIA, other than MORALES.

23. On further information and belief, SAIA engaged in the widespread practice of denying employees their meal and/or rest breaks.

24. California law provides that employees may file an action against an employer for penalties in connection with violations of the California Labor Code and Wage Orders.

IV.

CLASS ACTION DESIGNATION

25. Plaintiff also brings this action as a class action to recover all statutory damages, monies and penalties due and owing for all current and former non-exempt employees of SAIA in California as a result of its failure to pay regular wages, failure to pay overtime wages, failure to provide rest and/or meal periods, failure to provide itemized wage statements, failure to keep accurate records of time worked, failure to pay accrued and vested vacation and failure to pay timely wages at the termination of employment, all in violation of California Labor Code and in violation of the Wage Orders of the Industrial Welfare Commission.

26. Plaintiff brings this class action pursuant to California Code of Civil Procedure § 382 on behalf of a class of persons also affected by Defendant's Labor Code and Wage Order Violations. The class is generally defined as: All current and former hourly employees who worked for Defendant in California during the relevant time periods who were not provided meal and/or rests breaks, were not paid overtime, who worked off the clock and not timely paid either their wages due or wage premiums due. There is also an additional class for former employees who were not paid their vested vacation wages upon termination.

27. Causes of Action One through Nine are appropriately suited for a Class Action because:

a. The members of The Class are sufficiently numerous that joinder is impracticable. Plaintiff is informed and believe and thereon allege, that, at all relevant times, Defendant employed a number of persons, and caused an unlawful employment loss to a significant number of current and former employees. Plaintiff is at present uncertain of the exact number of current and former employees of Defendant affected by the unlawful employment practices alleged herein. However, Plaintiff is informed and believes that SAIA employs approximately 8,500 employees nationwide and at least 200 in California. Although the exact number is currently unknown to Plaintiff, this information is easily ascertainable from Defendant's payroll and personnel records.

b. Common questions of fact and law predominate. Such common questions include, but are not limited to:

i. Whether SAIA failed to provide daily rest periods to its non-exempt employees for every four hours or major fraction thereof worked and failed to compensate such employees one hour's pay in lieu of the rest period;

ii. Whether SAIA failed to provide meal periods to its non-exempt employees on days when the employee worked in excess of five hours and failed to compensate such employees one hour's pay in lieu of the meal period;

iii. Whether SAIA filed to accurately report compensation due for rest and meal periods;

iv. Whether SAIA failed to pay its non-exempt employees for all hours actually worked;

v. Whether SAIA filed to pay its non-exempt employees for all overtime hours worked;

vi. Whether SAIA failed to provide accurate itemized wage statements, itemizing the actual time worked and all wages earned;

vii. Whether SAIA failed to pay its terminated employees all earned and vested vacation;

c. Plaintiff's claims are typical of The Class. Plaintiff, like other members of The Class, were subjected to SAIA's ongoing Labor Code and Wage Order violations pertaining to meal periods, the timely payments of wages both during employment and upon separation of employment, itemized wage statements, payment of earned and vested vacation time upon separation, and time records.

d. Plaintiff will fairly and adequately protect the interest of all members of The Class because it is in his best interest to prosecute the claims alleged herein to obtain full compensation due himself and all members of The Class.

28. Plaintiff knows of no difficultly that might be encountered in management of this litigation which would preclude maintenance as a class action.

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V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PAY REGULAR WAGES
(Violation of Labor Code § 204)
(Alleged By Plaintiff, Individually and On Behalf of All Similarly Situated Current and Former Employees of SAIA, Against All Defendants)

29. Plaintiff incorporates by reference paragraphs 1 through 28 inclusive, and makes them a part of this First Cause of Action as though fully set forth herein.

30. During Plaintiff's employment with SAIA, all of Plaintiff's wages were due and payable by the time set forth in Labor Code § 204.

31. During Plaintiff's employment with SAIA, SAIA failed to pay Plaintiff all wages for all hours worked by the time set forth by law through conduct set forth herein, thereby violating Labor Code § 204.

32. As a direct result of Defendants' Labor Code violations, Plaintiff has suffered losses related to the use and enjoyment of compensation due and owing to him. Plaintiff seeks all available remedies for Defendants' violations including, but not limited to any and all wages due, penalties, monies, interest, attorney's fees, and costs.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES
(Violation of Labor Code § 510)
(Alleged By Plaintiff, Individually and On Behalf of All Similarly Situated Current and Former Employees of SAIA, Against All Defendants)

33. Plaintiff incorporates by reference paragraphs 1 through 32 inclusive, and makes them a part of this Second Cause of Action as though fully set forth herein.

34. During Plaintiff's employment with SAIA, he was a "non-exempt" employee of SAIA in California. Plaintiff was thereby not exempt from receiving overtime compensation.

35. During Plaintiff's employment with SAIA, Plaintiff, as alleged herein, worked without appropriate overtime compensation.

36. During the time period of Plaintiff's employment with SAIA, SAIA violated Labor Code §§ 204 and 510 when it failed to pay Plaintiff overtime wages for any and all work performed, including work performed during a meal period, and work performed in excess of 8 hours per day, and/or for any and all work performed in excess of 40 hours per week, and/or for any and all work performed on the seventh consecutive day in any one work week, by the time set forth by law. As a direct result of Defendants' Labor Code violations Plaintiff has suffered losses related to the use and enjoyment of compensation due and owing to him. Plaintiff seeks all available remedies for Defendants' violations including, but not limited to any and all wages due, overtime compensation, penalties, monies, interest, attorney's fees, and costs.

37. At all material times, SAIA and DOES 1 through 10 were and/or are Represented Employees' employers or persons acting on behalf of Represented Employees' employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set for in Labor Code § 558.

38. In committing the violations of state law as herein alleged, Defendants have knowingly and willfully refused to perform their obligations to compensate Represented Employees for all wages earned and all hours worked. As a direct result, Represented Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such compensation, wages, lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

39. Labor Code § 558 imposes upon Defendants for each initial violation of wage and hour laws a penalty of $50.00 for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover the underpaid wages. Furthermore, Labor Code § 558 imposes upon Defendants for each subsequent violation of wage and hour laws a penalty of $100.00 for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover the underpaid wages.

40. Represented Employees, including Plaintiff, seek to recover interest on all due and unpaid wages pursuant to Labor Code § 218.6.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

THIRD CAUSE OF ACTION

FAILURE TO PAY VACATION WAGES UPON TERMINATION
(Violation of Labor Code §§ 227.3)
(Alleged by Plaintiff Individually and On Behalf of All Similarly Situated Current and Former Employees of SAIA, Against Defendants)

41. Plaintiff incorporates by reference paragraphs 1 through 40 inclusive, and makes them a part of this Third Cause of Action as though fully set forth herein.

42. Labor Code §227.3 provides that whenever a company provides for paid vacations and an employee terminates without having taken vested vacation time, all vested vacation should be paid to the employee as wages. Furthermore, the employer policy shall not provide for forfeiture of vested vacation time.

43. SAIA engaged in policies and practices of withholding and keeping the Plaintiff and Represented Employees' earned vacation pay upon termination. SAIA failed to pay MORALES his vested vacation pay upon termination and as of the time of the filing of this lawsuit has continued to fail to pay MORALES his vested vacation pay.

44. As a direct result of Defendants' failure to pay Plaintiff all vested vacation due to him upon his termination of employment, Plaintiff has suffered losses related to the use and enjoyment of compensation due and owing to him. Plaintiff seeks all available remedies for Defendants' violations including, but not limited to any and all wages due, penalties, monies, interest, attorney's fees, and costs.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE MANDATED MEAL PERIODS
(Violation of Labor Code §§ 226.7 and 512)
(Alleged by Plaintiff Individually and On Behalf of All Similarly Situated Current and Former Employees of SAIA, Against Defendants)

45. Plaintiff incorporates by reference paragraphs 1 through 44 inclusive, and makes them a

part of this Fourth Cause of Action as though fully set forth herein.

46. For the purposes of this Cause of Action, Plaintiff and Represented Employees are or were "non-exempt" employees of SAIA who did not receive proper protections and benefits of the laws governing meal periods.

47. Labor Code § 226.7 requires employers, including SAIA, to provide to its non-exempt employees meal periods as mandated by Order of the Industrial Welfare Commission. Labor Code § 512(a), in part, provides that employers, including SAIA, may not employ an employee for a work period of more than five hours per day without providing an employee with an uninterrupted meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and the employee. Employers may not employ an employee for a work period more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.

48. SAIA violated Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order when it failed to provide the meal periods to Represented Employees, including Plaintiff, during the time period each Represented Employee worked for SAIA.

49. Pursuant to Labor Code § 226.7(b) and applicable Wage Order § 11(B), SAIA shall pay an employee one additional hour of pay at the employee's regular rate of compensation for each day that the meal period is not provided.

50. SAIA failed to provide Represented Employees, including Plaintiff, a meal period and provide payment for missed or interrupted meal periods, as required by Labor Code § 226.7(b) and by Order of the Industrial Welfare Commission.

51. As a result of SAIA's failure to pay Represented Employees an additional hour of pay for each day a meal period was not provided, Represented Employees suffered and continue to suffer a loss of wages and compensation, all in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

52. At all material times, SAIA and DOES 1 through 10 were and/or are Represented Employees' employers or persons acting on behalf of Represented Employees' employer, within the

meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set for in Labor Code § 558.

53. In committing the violations of state law as herein alleged, Defendants have knowingly and willfully refused to perform their obligations to compensate Represented Employees for all wages earned and all hours worked. As a direct result, Represented Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such compensation, wages, lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

54. Labor Code § 558 imposes upon Defendants for each initial violation of wage and hour laws a penalty of $50.00 for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover the underpaid wages. Furthermore, Labor Code § 558 imposes upon Defendants for each subsequent violation of wage and hour laws a penalty of $100.00 for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover the underpaid wages.

55. Represented Employees, including Plaintiff, seek to recover interest on all due and unpaid wages pursuant to Labor Code § 218.6.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE MANDATED REST PERIODS
(Violation of Labor Code § 226.7;
Violation of Industrial Welfare Commission Wage Order § 12)
(Alleged By Plaintiff Individually and On Behalf of All Similarly Situated Current and Former Employees of SAIA, Against Defendants)

56. Plaintiff incorporates by reference paragraphs 1 through 55 inclusive, and makes them a part of this Fifth Cause of Action as though fully set forth herein.

57. For the purposes of this Cause of Action, Plaintiff and Represented Employees are or were "non-exempt" employees of SAIA who did not receive proper protections and benefits of the

laws governing rest periods.

58. Labor Code § 226.7 requires employers, including SAIA, to provide to its non-exempt employees rest periods as mandated by Order of the Industrial Welfare Commission.

59. By Order of the Industrial Welfare Commission § 12, every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes rest time per four (4) hours or major fraction thereof. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages.

60. SAIA violated Labor Code § 226.7 and the IWC Order when it failed to provide all rest periods to Represented Employees, including Plaintiff, during the time period each Represented Employee worked for SAIA.

61. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage Order, SAIA shall pay employees one additional hour of pay at the employees' regular rate of compensation for each day that the rest period is not provided.

62. SAIA failed to provide Represented Employees, including Plaintiff, rest periods and provide payment for missed or interrupted meal and/or rest periods, as required by Labor Code § 226.7(b) and by Order of the Industrial Welfare Commission.

63. As a result of SAIA's failure to pay an additional hour of pay for each day a rest period was not provided, Represented Employees, including Plaintiff, suffered and continue to suffer a loss of wages and compensation, all in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

64. At all material times, SAIA and DOES 1 through 10 were and/or are Represented Employees' employers or persons acting on behalf of Represented Employees' employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set for in Labor Code § 558.

65. In committing the violations of state law as herein alleged, Defendants have knowingly

and willfully refused to perform their obligations to compensate Represented Employees for all wages earned and all hours worked. As a direct result, Represented Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such compensation, wages, lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants to full perform their obligation under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

66. Represented Employees, including Plaintiff, seek to recover interest on all due and unpaid wages pursuant to Labor Code § 218.6.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

SIXTH CAUSE OF ACTION

FAILURE TO PAY WAGES WITHIN REQUIRED TIME
(Violations of Labor Code §§ 201, 202, 203 and 227.3)
(Alleged by Plaintiff Individually and On Behalf of All Similarly Situated Current and Former Employees of SAIA, Against Defendants)

67. Plaintiff incorporates by reference paragraphs 1 through 66 inclusive, and makes them a part of this Sixth Cause of Action as though fully set forth herein.

68. Labor Code § 201 requires SAIA to immediately pay any wages, without abatement or reduction, to any employee who is discharged. For violation of Labor Code § 201, Labor Code § 203 causes the unpaid wages of the employee to continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, but the wages shall not continue for more than 30 days.

69. Labor Code § 202 requires SAIA to pay all wages earned and unpaid, without abatement or reduction, no later than 72 hours of receiving an employee's notice of intent to quit or immediately at the time of quitting if the employee provided at least 72 hours notice of intent to quit.

70. SAIA did not provide Plaintiff with all wages due and owing, including all regular and overtime wages, accrued vacation wages, and missed meal and rest period pay, by the time specified by Labor Code § 201 or 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and all similarly situated former employees (that is, who did not receive payment by the time required by Labor Code §§ 201 or 202) the above-described waiting time penalty, all in an amount to

be shown according to proof at trial and within the jurisdiction of this Court.

71. Plaintiff is informed and believes and thereon alleges that, at all times material to this action, Defendants, and each of them, had a planned pattern and practice of failing to pay employees all wages due and owing, including overtime and pay required pursuant to Labor Code § 226.7(b), within the time specified by Labor Code §§ 201 and 202. Consequently, pursuant to Labor Code § 203 Defendants owe Plaintiff and any similarly-situated current and former employees the above-described waiting time penalty, all in an amount to be shown according to proof at trial and within the jurisdiction of this Court.

72. Pursuant to Labor Code § 227.3, when an employer policy provides for paid vacation and an employee is terminated without having used all of his or her vested vacation time, all vested vacation shall be paid as wages at the final rate. Plaintiff and Represented Employees' accrued vacation time under Defendants' vacation policy. When Plaintiff and Represented Employees' employment with SAIA ended, SAIA did not pay them the vacation wages that were legally due under Labor Code § 227.3.

73. Represented Employees, including Plaintiff, seek interest on all due and unpaid wages pursuant to Labor Code § 218.6.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS
(Violation of Labor Code § 226)
(Alleged by Plaintiff Individually and On Behalf of All Similarly Situated Current and Former Employees of SAIA, Against Defendants)

74. Plaintiff incorporates by reference paragraphs 1 through 73 inclusive, and makes them a part of this Seventh Cause of Action as though fully set forth herein.

75. Labor Code § 226(a) requires that employers, including SAIA, furnish its employees with written itemized wage statements that show gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid, the name of the employee and the portion of his or her social security number as required by law, and all applicable hourly rates in effect during the pay period and the corresponding number of hours

worked at each hourly rate by the employee.

76. During the time of each Represented Employee's employment, Defendants intentionally failed to provide to Represented Employees, including Plaintiff, the above-described writing required by Labor Code § 226 through actions alleged herein, including a failure to provide total hours worked.

77. Defendants' failure to provide a writing deprived Represented Employees, and each of them, with the ability to know, understand and question the calculation and rate of pay and hours used to calculate the wages paid by Defendants, to each of them. Represented Employees, therefore, had no way to dispute the resulting miscalculation of wages, all of which resulted in an unjustified economic enrichment to Defendants. As a direct result, Represented Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial.

78. As a result of Defendants' knowing and intentional failure to comply with Labor Code § 226(a), Represented Employees, including Plaintiff, have suffered an injury in that they were prevented from knowing, understanding and disputing the wage payments paid to them. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages or fifty dollars ($50.00) for the initial pay period in which a violation occurred, and one hundred dollars ($100.00) per employee for each violation in subsequent pay periods, plus attorney's fees and costs, to each Represented Employee, including Plaintiff, who was injured by Defendants' failure to comply with Labor Code § 226(a). The exact amount of the applicable penalty is all in an amount to be shown according to proof at trial.

79. Pursuant to Labor Code § 226.3, Defendants, in violation of Labor Code § 226(a), are required to pay a penalty in the amount of two hundred fifty dollars ($250.00) per employee per violation for an initial violation, and one thousand dollars ($1,000.00) per employee for each violation in a subsequent violation in which Defendants violated Labor Code § 226.3. The exact amount of the applicable penalty is all in an amount to be shown according to proof at trial.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

EIGHTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200 et seq.
(Alleged by Plaintiff Individually and On Behalf of All Similarly Situated Current and Former Employees of SAIA, Against Defendants)

80. Plaintiff incorporates by reference paragraphs 1 through 79 inclusive, and makes them a part of this Eighth Cause of Action as though fully set forth herein.

81. California Business & Professions Code § 17200 et seq. prohibits acts of unfair competition, which includes any "unlawful, unfair or fraudulent business act or practice..." Plaintiff, as herein alleged, has suffered and continue to suffer injuries in fact, due to the unlawful business practices of Defendants.

82. As alleged herein, Defendants systematically engaged in unlawful conduct such as wage and hour abuse, failing to pay proper wages and monies for hours worked, editing employee time cards, and failing to pay all vested vacation wages upon termination all in order to decrease its costs of doing business and increase its profits.

83. At the time that each Represented Employee was hired, including Plaintiff, Defendants knowingly, intentionally and illegally misrepresented to each of them its conformance with the California Labor Code and IWC Wage Orders, including proper payments required by law.

84. From the time that each Represented Employee was hired, Defendants failed to comply with the California Labor Code and IWC Wage Orders through its actions as herein alleged including, but not limited to its failure to: (1) pay all wages due for all hours worked, including overtime wages, (2) provide accurate itemized wage statements, (3) pay all wages due and owing within the time specified by the Labor Code, (4) provide proper meal periods and rest breaks, (5) provide payments pursuant to Labor Code § 226.7 for missed meal periods and rest breaks, and (6) pay vested vacation wages upon termination, as required by law.

85. At all times relevant, Defendants intentionally and fraudulently avoided paying to Represented Employees wages and monies and other financial obligations attached thereto, thereby creating for Defendants an artificially lower cost of doing business in order to undercut its competitors and establish and/or gain a greater foothold in the marketplace, all to the detriment of Represented Employees.

86. At all relevant times herein, Defendants held themselves out to Represented Employees, and each of them, as being knowledgeable concerning the labor laws of California.

87. At all times relevant herein Represented Employees relied on and believed Defendants' representation concerning its conformance with the California wage and hour laws, all to their detriment.

88. As a result of Defendants' intentional, willful, purposeful, illegal and fraudulent misrepresentation of its conformance with the Labor Code and IWC Orders Represented Employees, including Plaintiff, suffered a loss of wages and monies, an amount according to proof at trial. By violating the foregoing statutes and regulations as herein alleged, Defendants' acts constitute unfair and unlawful business practices under Business and Professions Code §17200 et seq.

89. Defendants' violations of the California Labor Code and Orders of the Industrial Welfare Commission, and its scheme to lower its payroll costs as alleged herein, constitute unlawful business practices because it was done in a systematic manner over a period of time to the detriment of the Plaintiff and all others similarly-situated.

90. As a result of the unfair business practices of Defendants alleged herein, Plaintiff and all Represented Employees are entitled to injunctive relief, disgorgement, and restitution in an amount according to proof. As private attorneys general under California Civil Code § 1021.5, Represented Employees seek to recover any and all attorney's fees incurred herein.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For general damages;
2. For special damages;
3. For reasonable attorney fees, cost of suit, and interest to the extent permitted by law, including pursuant to Civil Code § 1021.5, and Labor Code §§ 218.6, 1194;
4. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and Orders of the Industrial Welfare Commission;
5. For injunctive relief as provided by the Labor Code and Business and Professions Code

§ 17200 *et seq.*;

6. For restitution as provided by Business and Professions Code § 17200 et seq.;

7. For an order requiring Defendants to restore and disgorge all funds to each Represented Employee acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and, therefore, constituting unfair competition under Business and Professions Code § 17200 et seq.;

8. For an award of damages in the amount of unpaid compensation including, but not limited to unpaid wages, benefits and penalties according to proof, including interest thereon;

9. For an award of an additional hour of pay at each Represented Employee's regular rate of compensation including, but not limited to unpaid wages pursuant to Labor Code § 226.7(b);

10. For an order imposing a constructive trust upon the Defendants to compel them to transfer Represented Employees' wages that have been wrongfully obtained and held by Defendants to Represented Employees;

11. For an accounting to determine all money wrongfully obtained and held by Defendants;

12. For a declaratory judgment that Defendants have violated Labor Code §§ 201, 202, 226, 226.7, 227.3, 510, 512, and 1194;

13. For pre- and post-judgment interest, and

14. For such other relief as the Court deems just and proper.

DATED: March 24, 2008

GRACE HOLLIS LOWE HANSON & SCHAEFFER LLP

By: [signature]
Graham S.P. Hollis
Kirk D. Hanson
Lori J. Guthrie
Attorneys for Plaintiff

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///

///

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury on all Causes of Action.

DATED: March 24, 2008

GRACE HOLLIS LOWE
HANSON & SCHAEFFER LLP

By: [signature]
Graham S.P. Hollis
Kirk D. Hanson
Lori J. Guthrie
Attorneys for Plaintiff

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Lori J. Guthrie, Esq. (SBN 196231)
GRACE HOLLIS LOWE HANSON & SCHAEFFER LLP
3555 Fifth Avenue
San Diego, CA 92101
TELEPHONE NO.: 619-692-0800 FAX NO.: 619-692-0822
ATTORNEY FOR (Name):

FOR COURT USE ONLY

2008 MAR 24 PM 2:32

SAN DIEGO COUNTY, CA

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego
STREET ADDRESS: 330 W. Broadway
MAILING ADDRESS:
CITY AND ZIP CODE: San Diego, CA 92101
BRANCH NAME: Hall of Justice

CASE NAME: Pedro Morales, II, et al. v. SAIA, Inc., et al.

CIVIL CASE COVER SHEET

[X] Unlimited (Amount demanded exceeds $25,000)
[ ] Limited (Amount demanded is $25,000 or less)

Complex Case Designation
[ ] Counter [ ] Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: 37-2008-00080522-CU-OE-CTL
JUDGE:
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort
[ ] Auto (22)
[ ] Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
[ ] Asbestos (04)
[ ] Product liability (24)
[ ] Medical malpractice (45)
[ ] Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
[ ] Business tort/unfair business practice (07)
[ ] Civil rights (08)
[ ] Defamation (13)
[ ] Fraud (16)
[ ] Intellectual property (19)
[ ] Professional negligence (25)
[ ] Other non-PI/PD/WD tort (35)

Employment
[ ] Wrongful termination (36)
[X] Other employment (15)

Contract
[ ] Breach of contract/warranty (06)
[ ] Rule 3.740 collections (09)
[ ] Other collections (09)
[ ] Insurance coverage (18)
[ ] Other contract (37)

Real Property
[ ] Eminent domain/Inverse condemnation (14)
[ ] Wrongful eviction (33)
[ ] Other real property (26)

Unlawful Detainer
[ ] Commercial (31)
[ ] Residential (32)
[ ] Drugs (38)

Judicial Review
[ ] Asset forfeiture (05)
[ ] Petition re: arbitration award (11)
[ ] Writ of mandate (02)
[ ] Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)
[ ] Antitrust/Trade regulation (03)
[ ] Construction defect (10)
[ ] Mass tort (40)
[ ] Securities litigation (28)
[ ] Environmental/Toxic tort (30)
[ ] Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
[ ] Enforcement of judgment (20)

Miscellaneous Civil Complaint
[ ] RICO (27)
[ ] Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
[ ] Partnership and corporate governance (21)
[ ] Other petition *(not specified above)* (43)

2. This case [ ] is [X] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. [ ] Large number of separately represented parties
   b. [ ] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. [ ] Substantial amount of documentary evidence
   d. [ ] Large number of witnesses
   e. [ ] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. [ ] Substantial postjudgment judicial supervision
3. Remedies sought *(check all that apply)*: a. [X] monetary b. [X] nonmonetary; declaratory or injunctive relief c. [ ] punitive
4. Number of causes of action *(specify)*: Eight (8)
5. This case [X] is [ ] is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. *(You may use form CM-015.)*

Date: 24 March 2008
Lori J. Guthrie, Esq. (SBN 196231)
(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
STREET ADDRESS: 330 West Broadway
MAILING ADDRESS: 330 West Broadway
CITY AND ZIP CODE: San Diego, CA 92101
BRANCH NAME: Central
TELEPHONE NUMBER: (619) 685-6058

PLAINTIFF(S) / PETITIONER(S): Pedro Morales, II

DEFENDANT(S) / RESPONDENT(S): Saia Inc

MORALES VS. SAIA INC

NOTICE OF CASE ASSIGNMENT	CASE NUMBER: 37-2008-00080522-CU-OE-CTL

Judge: John S. Meyer Department: C-61

COMPLAINT/PETITION FILED: 03/24/2008

CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

COMPLAINTS: Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central TELEPHONE NUMBER: (619) 685-6058	FOR COURT USE ONLY 04/08/2008
PLAINTIFF(S) : Pedro Morales, II	
DEFENDANT(S) : Saia Inc	
PEDRO MORALES VS. SAIA INC	
NOTICE OF CASE REASSIGNMENT	CASE NUMBER: 37-2008-00080522-CU-OE-CTL

Filed : 03/24/2008

EFFECTIVE IMMEDIATELY, THE ABOVE-ENTITLED CASE HAS BEEN REASSIGNED

to Judge Charles R. Hayes, in Department C-66

due to the following reason: Peremptory Challenge by plaintiff

All subsequent documents filed in this case must include the name of the new judge and the department number on the first page immediately below the number of the case. All counsel and self-represented litigants are advised that Division II of the Superior Court Rules is strictly enforced. It is the duty of each plaintiff (and cross-complainant) to serve a copy of this notice with the complaint (and cross-complaint).

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CASE NUMBER: 37-2008-00080522-CU-OE-CTL CASE TITLE: Morales vs. Sala Inc

NOTICE TO LITIGANTS/ADR INFORMATION PACKAGE

You are required to serve a copy of this Notice to Litigants/ADR Information Package and a copy of the blank Stipulation to Alternative Dispute Resolution Process (received from the Civil Business Office at the time of filing) with a copy of the Summons and Complaint on all defendants in accordance with San Diego Superior Court Rule 2.1.5, Division II and CRC Rule 201.9.

ADR POLICY

It is the policy of the San Diego Superior Court to strongly support the use of Alternative Dispute Resolution ("ADR") in all general civil cases. The court has long recognized the value of early case management intervention and the use of alternative dispute resolution options for amenable and eligible cases. The use of ADR will be discussed at all Case Management Conferences. It is the court's expectation that litigants will utilize some form of ADR – i.e. the court's mediation or arbitration programs or other available private ADR options as a mechanism for case settlement before trial.

ADR OPTIONS

1) CIVIL MEDIATION PROGRAM: The San Diego Superior Court Civil Mediation Program is designed to assist parties with the early resolution of their dispute. All general civil independent calendar cases, including construction defect, complex and eminent domain cases are eligible to participant in the program. Limited civil collection cases are not eligible at this time. San Diego Superior Court Local Rule 2.31, Division II addresses this program specifically. Mediation is a non- binding process in which a trained mediator 1) facilitates communication between disputants, and 2) assists parties in reaching a mutually acceptable resolution of all or part of their dispute. In this process, the mediator carefully explores not only the relevant evidence and law, but also the parties' underlying interests, needs and priorities. The mediator is not the decision-maker and will not resolve the dispute – the parties do. Mediation is a flexible, informal and confidential process that is less stressful than a formalized trial. It can also save time and money, allow for greater client participation and allow for more flexibility in creating a resolution.

Assignment to Mediation, Cost and Timelines: Parties may stipulate to mediation at any time up to the CMC or may stipulate to mediation at the CMC. Mediator fees and expenses are split equally by the parties, unless otherwise agreed. Mediators on the court's approved panel have agreed to the court's payment schedule for county-referred mediation: $150.00 per hour for each of the first two hours and their individual rate per hour thereafter. Parties may select any mediator, however, the court maintains a panel of court-approved mediators who have satisfied panel requirements and who must adhere to ethical standards. All court-approved mediator fees and other policies are listed in the Mediator Directory at each court location to assist parties with selection. **Discovery:** Parties do not need to conduct full discovery in the case before mediation is considered, utilized or referred. **Attendance at Mediation:** Trial counsel, parties and all persons with full authority to settle the case must personally attend the mediation, unless excused by the court for good cause.

2) JUDICIAL ARBITRATION: Judicial Arbitration is a binding or non-binding process where an arbitrator applies the law to the facts of the case and issues an award. The goal of judicial arbitration is to provide parties with an adjudication that is earlier, faster, less formal and less expensive than trial. The arbitrator's award may either become the judgment in the case if all parties accept or if no trial de novo is requested within the required time. Either party may reject the award and request a trial de novo before the assigned judge if the arbitration was non-binding. If a trial de novo is requested, the trial will usually be scheduled within a year of the filing date.

Assignment to Arbitration, Cost and Timelines: Parties may stipulate to binding or non-binding judicial arbitration or the judge may order the matter to arbitration at the case management conference, held approximately 150 days after filing, if a case is valued at under $50,000 and is "at issue". The court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. In addition, if parties select an arbitrator from the court's panel, the court will pay the arbitrator's fees. Superior Court

3) SETTLEMENT CONFERENCES: The goal of a settlement conference is to assist the parties in their efforts to negotiate a settlement of all or part of the dispute. Parties may, at any time, request a settlement conference before the judge assigned to their case; request another assigned judge or a pro tem to act as settlement officer; or may privately utilize the services of a retired judge. The court may also order a case to a mandatory settlement conference prior to trial before the court's assigned Settlement Conference judge.

4) OTHER VOLUNTARY ADR: Parties may voluntarily stipulate to private ADR options outside the court system including private binding arbitration, private early neutral evaluation or private judging at any time by completing the "Stipulation to Alternative Dispute Resolution Process" which is included in this ADR package. Parties may also utilize mediation services offered by programs that are partially funded by the county's Dispute Resolution Programs Act. These services are available at no cost or on a sliding scale based on need. For a list of approved DRPA providers, please contact the County's DRPA program office at (619) 238-2400.

ADDITIONAL ADR INFORMATION: For more information about the Civil Mediation Program, please contact the Civil Mediation Department at (619) 515-8908. For more information about the Judicial Arbitration Program, please contact the Arbitration Office at (619) 531-3818. For more information about Settlement Conferences, please contact the Independent Calendar department to which your case is assigned. Please note that staff can only discuss ADR options and cannot give legal advice.

E EXHIBIT 1 PAGE 44 1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	FOR COURT USE ONLY
STREET ADDRESS: 330 West Broadway	
MAILING ADDRESS: 330 West Broadway	
CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
PLAINTIFF(S): Pedro Morales II	
DEFENDANT(S): Saia Inc.	
SHORT TITLE: MORALES VS. SAIA INC	
STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION PROCESS (CRC 3.221)	CASE NUMBER: 37-2008-00080522-CU-OE-CTL

Judge: John S. Meyer Department: C-61

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution process. Selection of any of these options will not delay any case management time-lines.

☐ Court-Referred Mediation Program ☐ Court-Ordered Nonbinding Arbitration

☐ Private Neutral Evaluation ☐ Court-Ordered Binding Arbitration (Stipulated)

☐ Private Mini-Trial ☐ Private Reference to General Referee

☐ Private Summary Jury Trial ☐ Private Reference to Judge

☐ Private Settlement Conference with Private Neutral ☐ Private Binding Arbitration

☐ Other (specify): ______________________________

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) ______________________________

Alternate: (mediation & arbitration only) ______________________________

Date: ____________________ Date: ____________________

____________________ Name of Plaintiff ____________________ Name of Defendant

____________________ Signature ____________________ Signature

____________________ Name of Plaintiff's Attorney ____________________ Name of Defendant's Attorney

____________________ Signature ____________________ Signature

(Attach another sheet if additional names are necessary). It is the duty of the parties to notify the court of any settlement pursuant to California Rules of Court, 3.1385. Upon notification of the settlement the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court and all un-served, non-appearing or actions by names parties are dismissed.

IT IS SO ORDERED.

Dated: 03/24/2008 ____________________ JUDGE OF THE SUPERIOR COURT

4/21/08 2:30pm

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):
Lori J. Guthrie, Esq. (SBN 196231)
GRACE HOLLIS LOWE HANSON & SCHAEFFER LLP
3555 Fifth Avenue
San Diego, CA 92103

TELEPHONE NO.: 619-692-0800 FAX NO.: 619-692-0822
ATTORNEY FOR (Name): Plaintiff, Pedro Morales, II, et al.

FOR COURT USE ONLY

FILED
Clerk of the Superior Court
APR 15 2008
By: D. LIM, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
[X] HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101-3827
[ ] NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92083-6643
[ ] EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020-3941
[ ] RAMONA BRANCH, 1428 MONTECITO RD., RAMONA, CA 92065-5200
[ ] SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910-5649

PLAINTIFF(S) Pedro Morales, II, et al.

DEFENDANT(S) SAIA, Inc., et al.

JUDGE: Charles R. Hayes
DEPT: C-66

AMENDMENT TO COMPLAINT
(CCP 473, 474)

CASE NUMBER
37-2008-00080522-CU-OE-CTL

Under Section 474, Code of Civil Procedure:
FICTITIOUS NAME (Court order required once case is at issue. San Diego Superior Court Rules, Division II, rule 2.10)

Plaintiff(s), being ignorant of the true name of a defendant when the complaint in the above-named case was filed, and having designated said defendant in the complaint by the fictitious name of

DOE 1

and having discovered the true name of the said defendant to be

SAIA MOTOR FREIGHT LINE, LLC

amends the complaint by inserting such true name in place and stead of such fictitious name wherever it appears in said complaint.

Date: April 15, 2008

[signature]
Attorney(s) for Plaintiff(s)
Lori J. Guthrie, Esq. (SBN 196231)

Under Section 473, Code of Civil Procedure:
NAME - Add or Correct (Court order required)

Plaintiff(s), having designated a [ ] defendant [ ] plaintiff in the complaint by the name of

____________________,

and having discovered [ ] said name to be incorrect and the correct name is [ ] defendant also uses the name of

____________________,

amends the complaint by [ ] substituting [ ] adding such name(s) wherever the name of

____

appears in said complaint.

Date: __________

Attorney(s) for Plaintiff(s)

ORDER

The above amendment to the complaint is allowed.

Date: __________

Judge of the Superior Court

Copy to me
Original to Reuben.

CT CORPORATION
A WoltersKluwer Company

Service of Process Transmittal
04/22/2008
CT Log Number 513342121

TO: Jim Darby
Saia Motor Freight Line, Inc.
11465 Johns Creek Parkway, Suite 400
Duluth, GA 30097

RE: **Process Served in California**

FOR: SAIA Motor Freight Line, LLC (Domestic State: LA)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:	Pedro Morales, II, individually and on behalf of All Current and Former Employees of SAIA, Inc., Pltf. vs. SAIA, Inc., et al. including SAIA Motor Freight Line, LLC, Dfts.
DOCUMENT(S) SERVED:	Amendment to Complaint, Summons, Complaint, Demand for Jury Trial, Cover Sheet, Notice(s), Stipulation Form
COURT/AGENCY:	San Diego County, Superior Court, CA Case # 37200800080522CUOECTL
NATURE OF ACTION:	Employee Litigation - Class Action - Failure to pay regular wages - Failure to pay overtime wages - Failure to pay vacation wages - Failure to provide mandated meal periods and rest periods - Failure to pay timely wages - Failure to provide itemized wage statements
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Los Angeles, CA
DATE AND HOUR OF SERVICE:	By Process Server on 04/21/2008 at 14:30
APPEARANCE OR ANSWER DUE:	Within 30 days after service
ATTORNEY(S) / SENDER(S):	Lori J. Guthrie Grace Hollis Lowe Hanson & Schaeffer LLP 3555 Fifth Avenue San Diego, CA 92103 619-692-0800
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex Standard Overnight , 791050318097
SIGNED:	C T Corporation System
PER:	Nancy Flores
ADDRESS:	818 West Seventh Street Los Angeles, CA 90017
TELEPHONE:	213-337-4615

APR 2008
RECEIVED

Page 1 of 1 / VI

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

COPY

FILED
CIVIL BUSINESS OFFICE 5
2008 MAY 19 P 3:01
CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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Pamela C. Calvet (California Bar No. 112612)
Amy M. Gantvoort (California Bar No. 227294)
120 Broadway, Suite 300
Santa Monica, California 90401-2386
Telephone: (310) 576-2100
Facsimile: (310) 576-2200

BRYAN CAVE LLP
Julie E. Patterson (California Bar No. 167326)
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SAIA MOTOR FREIGHT LINE, LLC

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FAXED

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

PEDRO MORALES, II, individually and on behalf of All Current and Former Employees of SAIA, INC., Plaintiff, vs. SAIA, INC., and DOES 1 through 10, inclusive. Defendants.	Case No. 37-2008-00080522-CU-OE-CTL CLASS ACTION [Assigned for all purposes to the Hon. John S. Meyer, Dept. C-61] **ANSWER OF DEFENDANT SAIA MOTOR FREIGHT LINE, LLC TO PLAINTIFF'S UNVERIFIED CLASS ACTION COMPLAINT** Complaint Filed: March 24, 2008 Trial Date: TBA

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On or about March 24, 2008, Plaintiff Pedro Morales, II ("Plaintiff") filed the unverified Class Action Complaint ("Complaint"). On or about April 15, 2008, an Amendment to the Complaint was filed to insert Defendant Saia Motor Freight Line, LLC ("Defendant") in place and stead of the fictitious named "Doe 1." Defendant Saia, Inc. has not been served and is not and has never been the employer and is not a proper party.

Answering the Complaint on behalf of Defendant, and no other entity, Defendant responds to the allegations contained in the Complaint as follows:

GENERAL DENIAL

Pursuant to section 431.30(d) of the California Code of Civil Procedure, Defendant denies generally and specifically each and every allegation contained in the Complaint. Defendant further denies that Plaintiff or any putative class members are owed or have sustained damages in any amount whatsoever or are entitled to any legal relief.

AFFIRMATIVE DEFENSES

Defendant specifically reserves the right to amend its answer to allege further affirmative defenses that it may have against the putative class, and/or subclasses, if any is certified. The Court has not yet certified a class and the putative class members are not parties to this action. Defendant further reserves the right to amend its answer if additional defenses become apparent throughout the course of litigation. Notwithstanding the foregoing and without waiving its right to assert additional defenses, Defendant alleges affirmative defenses that it now knows to be applicable to Plaintiff and/or all or some of the putative class members.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

1. Neither the Complaint, nor any purported cause of action alleged in the Complaint, states a cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE

(Preemption – Motor Carrier Safety Act)

2. Plaintiff's claims are preempted, in whole or in part, by the federal Motor

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Carrier Safety Act. *See* 49 U.S.C. §§ 31502, 31136, 31141; 49 C.F.R pt. 395.

THIRD AFFIRMATIVE DEFENSE

(Preemption – Federal Aviation Administration Authorization Act)

3. Plaintiff's claims are preempted, in whole or in part, by the Federal Aviation Administration Authorization Act, 49 U.S.C. section 14501(c)(1).

FOURTH AFFIRMATIVE DEFENSE

(Statutes of Limitation)

4. The Complaint, and each purported cause of action alleged in the Complaint, is barred by the applicable statutes of limitation, including but not limited to California Code of Civil Procedure sections 338(a), 340(a) and California Business and Professions Code section 17208.

FIFTH AFFIRMATIVE DEFENSE

(No Injury)

5. The Complaint, and each purported cause of action alleged in the Complaint, is barred on the ground that Plaintiff has suffered no injury in fact with respect to the facts alleged in the Complaint.

SIXTH AFFIRMATIVE DEFENSE

(No Willful Deprivation of Wages)

6. Defendant did not willfully, intentionally, arbitrarily or without just cause deprive any person of any wages to which they were entitled under California wage and hour laws.

SEVENTH AFFIRMATIVE DEFENSE

(No Knowledge of Off-the-Clock Work)

7. Defendant has no knowledge of, nor should it have knowledge of, any alleged off-the-clock work by Plaintiff and did not authorize, require, request, suffer or permit such activity by Plaintiff.

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EIGHTH AFFIRMATIVE DEFENSE

(Compliance with Applicable Laws and Regulations)

8. Plaintiff's claims are barred, in whole or in part, because Defendant has substantially complied with any and all applicable statutes, regulations and/or laws.

NINTH AFFIRMATIVE DEFENSE

(Outside the Scope of Authority)

9. If any manager or supervisor authorized, required, requested, suffered or permitted an employee to miss a meal or rest period or work off-the-clock, such supervisor or manager acted outside the scope of his or her employment with Defendant.

TENTH AFFIRMATIVE DEFENSE

(De Minimis)

10. Plaintiff's claims are in whole or part de minimis.

ELEVENTH AFFIRMATIVE DEFENSE

(No Failure to Provide Meal Periods)

11. Plaintiff and all of the purported class members were provided meal periods in compliance with applicable law.

TWELFTH AFFIRMATIVE DEFENSE

(No Failure to Provide Rest Periods)

12. Plaintiff and all of the purported class members were authorized and permitted to take rest periods in compliance with applicable law.

THIRTEENTH AFFIRMATIVE DEFENSE

(Waiver of Rest and Meal Periods)

13. To the extent that Plaintiff did not receive a rest or meal period during his work shifts, it was because Plaintiff waived such rest or meal period.

FOURTEENTH AFFIRMATIVE DEFENSE

(Exemption)

14. Plaintiff's claims are barred, in whole or in part, to the extent that the purported class members are exempt from the overtime compensation or other

requirements of the Wage Orders of the Industrial Welfare Commission.

FIFTEENTH AFFIRMATIVE DEFENSE

(No Itemized Statement Penalty)

15. Defendant did not knowingly or intentionally fail to provide accurate itemized statements to Plaintiff within the meaning of Labor Code section 226.

SIXTEENTH AFFIRMATIVE DEFENSE

(Good Faith Dispute)

16. Defendant did not willfully fail to pay Plaintiff or any of the purported class members wages within the meaning of Labor Code section 203 because a good faith dispute exists that any wages are due.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Good Faith)

17. Defendant's actions concerning the matters alleged in the Complaint, if any, were taken in good faith.

EIGHTEENTH AFFIRMATIVE DEFENSE

(No Unfair or Unlawful Business Practice)

18. Defendant has not engaged in any "business practice" which is "unlawful," "unfair" or "fraudulent" within the meaning of California Business and Professions Code section 17200 *et seq*.

NINETEENTH AFFIRMATIVE DEFENSE

(Unconstitutionally Vague)

19. As applied to the allegations set forth in the Complaint, the provisions of California Business and Professions Code section 17200 *et seq.* are unconstitutionally vague and violate Defendant's rights under the United States and California Constitutions.

TWENTIETH AFFIRMATIVE DEFENSE

(No Standing)

20. Plaintiff and some or all of the purported class members lack standing to assert their alleged claims against Defendant.

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TWENTY-FIRST AFFIRMATIVE DEFENSE

(Class Action Not Proper)

21. This action is not properly brought as a class action.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Representation Not Proper)

22. Plaintiff is not an adequate representative of the allegedly aggrieved parties in this action, and therefore lacks standing.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(No Community of Interest)

23. The purported class members do not share a community of interest in common questions of law and/or fact.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Unconstitutional as Class Action)

24. The class allegations are barred on the ground that if this action is certified as a class action, Defendant's rights under the Fifth and Seventh Amendments of the United States Constitution would be violated.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(No Proximate Cause)

25. Any acts, or omissions to act, by Defendant were not the proximate cause of any damages suffered by Plaintiff.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Privilege/Justification)

26. Defendant's actions concerning the matters alleged in the Complaint, if any, were privileged and/or justified.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Defendant Has Not Been Unjustly Enriched)

27. Defendant has not received any profits or other inappropriate gains and has not been unjustly enriched as a result of the conduct alleged in the Complaint.

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TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Plaintiff Seeks Unjust Enrichment)

28. The Complaint, and each purported cause of action contained in the Complaint, is barred, in whole or in part, on the ground that Plaintiff and/or the purported class members would be unjustly enriched if they were allowed to recover certain claimed damages in the Complaint.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Adequate Remedy at Law)

29. To the extent Plaintiff has suffered any of the alleged injuries (which Defendant denies), Plaintiff has an adequate remedy at law for such alleged injuries.

THIRTIETH AFFIRMATIVE DEFENSE

(Balance of Equities)

30. The equities in this case weigh against the relief Plaintiff seeks.

THIRTY-FIRST AFFIRMATIVE DEFENSE

(Unclean Hands)

31. The Complaint, and each purported cause of action alleged in the Complaint, is barred by the doctrine of unclean hands.

THIRTY-SECOND AFFIRMATIVE DEFENSE

(Waiver/Estoppel)

32. The Complaint, and each purported cause of action alleged in the Complaint, is barred under the doctrines of waiver and/or estoppel.

THIRTY-THIRD AFFIRMATIVE DEFENSE

(Laches)

33. The Complaint, and each purported cause of action alleged in the Complaint, is barred under the doctrine of laches.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

(No Damages)

34. Plaintiff has suffered no legally cognizable damages as a result of the

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conduct alleged in the Complaint.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

35. Plaintiff's recovery as to each purported cause of action alleged in the Complaint is barred, in whole or in part, by his failure to exercise reasonable care and diligence to mitigate any damages allegedly accruing to him.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

(No Right to Attorneys' Fees)

36. Plaintiff is not entitled to recovery of attorneys' fees or costs from Defendant as alleged in the Complaint.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

(Fails to State Facts Sufficient for Penalties)

37. The Complaint fails to state facts sufficient to constitute a claim against Defendant for penalties in any amount whatsoever.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

(Failure to Comply with Administrative Prerequisites)

38. Plaintiff is not entitled to recover civil penalties pursuant to the California Labor Code because he has failed to provide adequate notice and/or comply with the administrative prerequisites mandated by Labor Code section 2699.3 to recover such penalties.

THIRTY-NINTH AFFIRMATIVE DEFENSE

(Penalties Would be Unconstitutional)

39. Plaintiff and the purported class members are not entitled to recover any penalties as prayed for in the Complaint because such an award would violate Defendant's rights under the Constitution of the United States of America and the Constitution of the State of California, including without limitation, Defendant's rights to (1) procedural due process under the Constitution of the State of California and the Fourteenth Amendment of the Constitution of the United States of America; (2) protection from excessive fines as

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provided in the Eighth Amendment of the Constitution of the United States of America, and Article I, Section 7 of the Constitution of the State of California; and (3) substantive due process provided in the Constitution of the State of California and the Fifth and Fourteenth Amendments of the Constitution of the United States of America.

FORTIETH AFFIRMATIVE DEFENSE

(Restitution and Injunctive Relief Would be Unconstitutional)

40. Plaintiff and the purported class members' demands for restitution and injunctive relief are unconstitutional in that they seek to impose an excessive fine within the meaning of the Excessive Fines clause of the California Constitution.

FORTY-FIRST AFFIRMATIVE DEFENSE

(Not Entitled to Injunctive Relief)

41. Plaintiff is not entitled to the requested injunctive relief, or any injunctive relief or equitable relief, because, among other things, (i) Plaintiff has an adequate remedy at law if he succeeds in this action, (ii) there is no reasonable likelihood that the Plaintiff will prevail on the merits, and/or (iii) Plaintiff cannot show any threat of irreparable harm.

FORTY-SECOND AFFIRMATIVE DEFENSE

(No Right to Prejudgment Interest)

42. Plaintiff and the purported class members are not entitled to recover pre-judgment interest because their alleged damages are not certain or capable of being made certain by any calculation.

FORTY-THIRD AFFIRMATIVE DEFENSE

(Saia, Inc.)

43. The named defendant Saia, Inc. was not, and is not, the employer of the Plaintiff or any of the purported class members and is not a proper party to this action.

FORTY-FOURTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

44. The Complaint, and each purported cause of action alleged in the Complaint, is barred, in whole or in part, to the extent Plaintiff has failed to exhaust his administrative

remedies.

PRAYER

WHEREFORE, Defendant prays for judgment as follows:

1. That the Court deny any request for class certification;

2. That Plaintiff takes nothing by virtue of the Complaint and that judgment be entered in favor of Defendant;

3. That the Complaint and each purported cause of action therein be dismissed with prejudice;

4. That Defendant be awarded its costs of suit and attorneys' fees incurred in defense of this action; and

5. For such other and further relief as the Court deems just and proper.

Dated: May 19, 2008

BRYAN CAVE LLP
Pamela C. Calvet
Julie E. Patterson
Amy M. Gantvoort

By: /s/ Pamela C. Calvet
Pamela C. Calvet
Attorneys for Defendants
SAIA, INC. and
SAIA MOTOR FREIGHT LINE, LLC

BRYAN CAVE LLP
120 BROADWAY, SUITE 300
SANTA MONICA, CALIFORNIA 90401-2386

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 120 Broadway, Suite 300, Santa Monica, California 90401.

On May 19, 2008, I served the foregoing document, described as **ANSWER OF DEFENDANTS SAIA, INC. and SAIA MOTOR FREIGHT LINE, LLC TO PLAINTIFF'S UNVERIFIED CLASS ACTION COMPLAINT**, on each interested party in this action, as follows:

Graham S.P. Hollis, Esq.
Kirk D. Hanson, Esq.
Lori J. Guthrie, Esq.
GRACE HOLLIS LOWE HANSON & SCHAEFFER LLP
3555 Fifth Avenue
San Diego, California 92103
Tel: (619) 692-0800
Fax: (619) 692-0822

Attorneys for Plaintiffs

☒ (BY MAIL) I placed a true copy (or original) of the foregoing document in a sealed envelope addressed to each interested party as set forth above. I placed each such envelope, with postage thereon fully prepaid, for collection and mailing at Bryan Cave LLP, Santa Monica, California. I am readily familiar with Bryan Cave LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.

☐ (BY FEDEX) I deposited in a box or other facility maintained by FedEx, an express carrier service, or delivered to a courier or driver authorized by said express carrier service to receive documents, a true copy of the foregoing document, in an envelope designated by said express service carrier, with delivery fees paid or provided for.

☐ (BY FAX) I caused a true copy of the foregoing document to be served by facsimile transmission at the time shown on each attached transmission report from sending facsimile machine telephone number (310) 576-2200 to each interested party at the facsimile number shown above. Each transmission was reported as complete and without error. A transmission report was properly issued by the sending facsimile machine for each interested party served. A true copy of each such transmission report is attached hereto.

Executed on May 19, 2008, at Santa Monica, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Deborah Swisher

Deborah Swisher

BRYAN CAVE LLP
120 BROADWAY, SUITE 300
SANTA MONICA, CALIFORNIA 90401-2386

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Bryan Cave LLP, 120 Broadway, Suite 300, Santa Monica, California 90401.

On May 21, 2008, I served the foregoing document, described as **SAIA MOTOR FREIGHT LINE, LLC'S NOTICE OF REMOVAL UNDER 28 U.S.C. §§ 1332(d) AND 1441(a) (DIVERSITY OF CITIZENSHIP)**, on each interested party in this action, as follows:

Graham S.P. Hollis, Esq. Kirk D. Hanson, Esq. Lori J. Guthrie, Esq. GRACE HOLLIS LOWE HANSON & SCHAEFFER LLP 3555 Fifth Avenue San Diego, California 92103 Tel: (619) 692-0800 Fax: (619) 692-0822	Attorneys for Plaintiffs

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Executed on May 21, 2008, at Santa Monica, California.

☒ (FEDERAL ONLY) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Susan N. Marder

BRYAN CAVE LLP
120 BROADWAY, SUITE 300
SANTA MONICA, CALIFORNIA 90401-2386

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 120 Broadway, Suite 300, Santa Monica, California 92614.

On May 22, 2008, I served the foregoing document, described as **DEFENDANT SAIA MOTOR FREIGHT LINE, LLC'S NOTICE TO ADVERSE PARTY AND TO STATE COURT OF REMOVAL TO FEDERAL COURT**, on each interested party in this action, as follows:

Graham S.P. Hollis, Esq. Kirk D. Hanson, Esq. Lori J. Guthrie, Esq. GRACE HOLLIS LOWE HANSON & SCHAEFFER LLP 3555 Fifth Avenue San Diego, California 92103 Tel: (619) 692-0800 Fax: (619) 692-0822	Attorneys for Plaintiffs

☒ (BY MAIL) I placed a true copy (or original) of the foregoing document in a sealed envelope addressed to each interested party as set forth above. I placed each such envelope, with postage thereon fully prepaid, for collection and mailing at Bryan Cave LLP, Santa Monica, California. I am readily familiar with Bryan Cave LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.

☐ (BY FEDEX) I deposited in a box or other facility maintained by FedEx, an express carrier service, or delivered to a courier or driver authorized by said express carrier service to receive documents, a true copy of the foregoing document, in an envelope designated by said express service carrier, with delivery fees paid or provided for.

☐ (BY FAX) I caused a true copy of the foregoing document to be served by facsimile transmission at the time shown on each attached transmission report from sending facsimile machine telephone number (310) 576-2200 to each interested party at the facsimile number shown above. Each transmission was reported as complete and without error. A transmission report was properly issued by the sending facsimile machine for each interested party served. A true copy of each such transmission report is attached hereto.

Executed on May 22, 2008, at Santa Monica, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

[signature]
Susan N. Marder

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SANTA MONICA, CALIFORNIA 90401-2386

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Bryan Cave LLP, 120 Broadway, Suite 300, Santa Monica, California 90401.

On May 28, 2008, I served the foregoing document, described as **DEFENDANT SAIA MOTOR FREIGHT LINE, LLC'S CERTIFICATION OF FILING AND SERVICE OF NOTICE TO ADVERSE PARTY AND STATE COURT OF REMOVAL TO FEDERAL COURT**, on each interested party in this action, as follows:

Graham S.P. Hollis, Esq.
Kirk D. Hanson, Esq.
Lori J. Guthrie, Esq.
GRACE HOLLIS LOWE HANSON & SCHAEFFER LLP
3555 Fifth Avenue
San Diego, California 92103
Tel: (619) 692-0800
Fax: (619) 692-0822

Attorneys for Plaintiffs

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Executed on May 28, 2008, at Santa Monica, California.

☒ (FEDERAL ONLY) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

I declare under penalty of perjury under the laws of the United States of America and the state of California that the foregoing is true and correct.

Susan N. Marder